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October 2, 1984

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Assistant U.S. Attorney
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Boston, MA 02110

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**REGION I
OFFICE OF REGIONAL COUNSEL**

Dear Mr. Child:

This is in response to your letter of September 26, commenting on my letter to Charles Bering of September 20. I must say that I find your position, as well as that of EPA, surprising. The Department of Justice has sued my clients and others seeking, among other things, reimbursement for response costs which might be incurred based upon the RI/FS issued by EPA in August, 1984 and as to which comments are now due by November 15. I cannot imagine a document that is more germane to this litigation than that RI/FS. To suggest that discovery in the case, which has been sought by me and other defense counsel is unwarranted and bears no "linkage" to the RI/FS and what may flow from it is disingenuous in the extreme. In the first place, we cannot prepare meaningful comments to the RI/FS without the requested discovery. Indeed, I am also about to issue deposition notices to NUS Corporation and others for the same purpose. Second, the EPA has given no indication that it will grant us the adjudicatory hearing to which we are entitled. Your position and that of EPA combine to deprive the defendants of due process.

Your suggestion, and that of Mr. Bering in his letter to me of September 26, that I can obtain documents from the EPA is unacceptable. Mr. Bering states only that the EPA is willing to grant "reasonable requests" for copies of specific documents, provided that the "documents released will not include material which the government considers exempt from disclosure." The EPA has no basis for arrogating to itself the decision as to who will have access to this information. Rather, the Federal Rules of Civil Procedure must govern. I reject out of hand the notion that the EPA can decide for itself what information should be available to the defendants during this comment period. The problem is exacerbated by your effort to bifurcate the liability and damage issues in the case and to have stayed discovery on the damage or response cost-related issues. It seems to me that what the EPA, abetted by

Ralph A. Child

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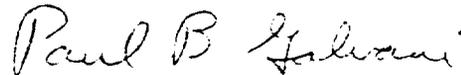
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the Justice Department, wants is to make a decision that is fundamental to the rights of all defendants, but without giving them a meaningful opportunity to be heard or to defend themselves.

I have told Ellen Mahan that I would be more than happy to agree to an extension of time for the government to respond to our interrogatories and document requests, provided that a concomitant extension is granted the defendants to submit comments on the RI/FS. She rejected my suggestion. Instead, she has advised me that she will be filing a motion for an extension of time to respond to our discovery requests. It originally was agreed that there would be simultaneous discovery by both parties. Aerovox Incorporated is ready to respond th the government's interrogatories and document requests. I shall furnish tomorrow a set of objections to your interrogatories and document requests. The answers will be furnished when the government complies with its discovery obligations.

I should point out that it is my understanding that both Belleville and Cornell-Dubilier have agreed to your 60-day extension request. Further, RTE and FPE have filed and briefed pending motions to stay discovery. Accordingly, this letter is on behalf of Aerovox Incorporated and AVX Corporation insofar as it states a position with respect to an extension of time sought by the government. Insofar as it states the procedural rights of the parties, I believe all defendants are in agreement.

Very truly yours,



Paul B. Galvani

PBG:jmm
Enclosures

cc: Daniel J. Gleason, Esq.
David A. McLaughlin, Esq.
John Quarles, Esq.
Lee Breckenridge, Esq.
Jeffrey Bates, Esq.
Ellen Mahan, Esq.
William Cheeseman, Esq.
Charles C. Bering, Esq.